lutely unlawful, and as the prisoner had been once in jeopardy he might have the benefit of the *habeas corpus*. It cannot be doubted that justice was cheated again. Such judicial escapes as this have led to a general relaxation of the criminal procedure, and it may be urged that it is the merest form to require the jury to reaffirm its written verdict. On the other hand it may be a valuable privilege for the accused to ask the final decision of each of his triers separately when the coercion of the majority of the fellow-jurors ceases to have effect; he would have had this privilege if there had been no sealed verdict, — why should he lose it? The oral verdict is at most only a slight formality, not harassing, and seldom objected to. The conservative decision in the principal case represents the bulk of the American authority, though states like Massachusetts and Virginia, which have done away with polling, might well refuse to follow it.

PROPERTY IN ANIMALS FERÆ NATURÆ. — When an animal *ferœ naturœ* is reduced into possession, the possessor gains a qualified proprietary right. The limitations of that right were involved in a recent decision of the New York Supreme Court. *Mullett* v. *Bradley*, 53 N. Y. Supp. 781 (Sup. Ct. App. Term.). A sea-lion, brought from the Pacific coast to Long Island, escaped from the possession of its owner, and was abandoned by him. A year afterward it was recaptured upon the New Jersey coast by a fisherman, seventy miles from the place of escape. Upon these facts it seems clear that the former owner had forfeited his right by the abandonment. *Buster* v. *Newkirk*, 20 Johns. 73. However, this was not the *ratio decidendi*. The court held for the fisherman upon the ground that the owner had lost his property by the very loss of possession.

The ruling of the court represents the usual statement of the law of property in wild animals that remain undomesticated. *Goff* v. *Kilts*, 15 Wend. 550; *Ulery* v. *Jones*, 81 Ill. 403. The old writers assume that as ownership in animals *ferœ naturœ* is acquired by taking possession, the property is always contingent upon the maintenance of an actual possession. The further ancient rules that such animals remain property when beyond manual control *animo revertendi*, and their young, always, *ratione impotentiœ*, seem not even exceptions to that general principle. Bracton, liv. 2, c. i.; Institutes, liv. iv. Tit. 9. Now, the usual title gained by possession is not defeasible by the mere loss of possession. Again, this ancient rule limiting the rights of ownership in animals *ferœ naturœ* seems inconsistent with the related law governing the responsibility of owners for injury done by such animals. Where a bear slipped his collar and in his escape to the woods injured a man, the court held the owner liable as a matter of course. *Vredenburg* v. *Behan*, 33 La. Ann. 627. The one limitation that has been suggested is that when the animal reaches its native place or an environment specially adapted to its existence, liability should cease. This points to a practical distinction between indigenous and imported animals — liability for the one may cease upon loss of possession, not for the other.

It would seem that the same law should govern the extent of the responsibility for animals *ferœ naturœ* and the rights of property in them; and it is to be regretted that an express dictum in the principal case insists upon the ancient rule. If in the principal case the interruption of the owner's possession had been momentary, it would be hard to hold that

a fisherman taking possession the next moment thereby had the title. Large amounts of capital are to-day invested in wild animals imported for exhibition, and grave injustice may some time arise from a strict application of the ancient rule.

THE PAROL EVIDENCE RULE AGAIN. — The following communication contains additional facts regarding the case of *In Re Root's Estate*, where the Supreme Court of Pennsylvania reversed the decision of the Orphans' Court on the ground that it was error to admit evidence of the testator's intention.

"By way of supplement to the note in the November number of the REVIEW (p. 210), on 'The Parol Evidence Rule as Applied to Wills,' it may be added that in the case commented on (Root's Estate, 40 Atl. Rep. 818; s. c. 187 Pa., 118), the Court ignores, and the report fails to mention, the fact that the will itself, as will be seen from the following extract, shows that the testator spoke of his wife's nephews as 'my nephews': — 'And . . . after the decease of my said dear wife, I do give . . . : Unto my wife's cousin, M. L. Greer, . . . $6000; unto my nephew, William Root, . . . $1000; unto my nephew, George Clayton, . . . $1000; unto my wife's sister, Sarah Root, . . . $1000; unto my nephew, Henry Sheppard, . . . $1000; unto my nephew, John Sheppard, . . . $1000.'

"Of the persons thus described as 'my nephews,' George Clayton was his nephew, while Henry Sheppard and John Sheppard were, admittedly, the nephews of his wife: whether, therefore, the 'William Root' intended was actually his nephew of that name, or the William who was his nephew only in the sense in which the two Sheppards were, was the question; and in the court below, the matter having, under exceptions to the original adjudication, been referred back to the Auditing Judge for inquiry upon this point (Legal Intelligencer, February 5th, 1897, 6 District Rep., 78), it was found from the evidence that of the two persons to whom, in the sense indicated by the will, the language was equally applicable, William Root, the wife's nephew, was the one intended, and the legacy was accordingly awarded to him."

These facts show an unusual combination of circumstances. Had there been two true nephews named William Root it has long been settled law that the testator's declarations of intention would be admitted. This would be a case where, in the dictionary meaning of the words, the will applies exactly to two persons. The principal case differs in that one of the William Roots was a wife's nephew, and that the dictionary meaning of the words would point to but one of the William Roots and exclude the other. But when the entire will is examined — as it undoubtedly may be in such a case — it appears that the testator was not using the term "my nephew" in its strict dictionary sense, but indiscriminately, as meaning either "my nephew," or "my wife's nephew." That is, if the will is used as a dictionary and the testator is made his own interpreter, it appears that he attached a meaning to the phrase "my nephew" which was equally applicable to either William Root, and that, accordingly, there were here two persons who in the light of the whole instrument exactly filled the description. Whether there is sufficient difference between this case and the case of two real nephews of the same name to warrant the exclusion here of the declarations of intention is a question which, until the present case, has apparently never come before a court. It is accordingly the